



Standards and Guidelines for Drafting Bar Examination Questions

*Approved by the Idaho Supreme Court - July 24, 1974
Amended June 9, 1988, November 13, 1989, January 28, 1993, June 10, 1998,
and August 12, 2003*

The following are standards and guidelines for use by attorneys requested to draft Idaho originated bar examination questions for the Idaho State Bar. The Court specifically authorizes the use of the Multistate Essay Exam (MEE) prepared by the National Conference of Bar Examiners as a component of the Idaho Bar Examination. The MEE questions are drafted in accordance with comparable standards adopted by the National Conference of Bar Examiners. The MEE questions are not drafted with the intent that they be answered in accordance with Idaho law although, depending on the subject area, applicants may be required to answer in accordance with Idaho law.

I. STANDARDS AND GUIDELINES FOR BAR EXAMINATION QUESTIONS:

1. Wording of the Question

The question should be in the form of a hypothetical fact problem requiring an essay answer. Special effort should be made to phrase the question so as to be as definite and unambiguous as possible so as not to mislead the examinee as to the parties, issues or substantive law. It is suggested that you use descriptive names for each of the parties involved, rather than proper names (e.g., *Buyer* rather than *Jones*, *Seller* rather than *Brown* or other descriptive names such as *Lessor* or *Landlord*, *Lessee* or *Tenant*, or merely *P* or *D*). The question should be reviewed by you to ascertain whether unnecessary time of the applicant will have to be used in order to understand the facts of the question posed rather than analyzing the points of law raised by such facts.

2. Call of the Question

The question should solicit a specific response, sometimes referred to as the *call of the question*. The call of the question should be direct, concise and unambiguous, but at the same time it should not by its wording identify the specific legal issues involved. It is suggested that you avoid such calls as *Advise* or *Advise P*. If the call asks for the legal rights of the parties, make the call specific such as "What are the rights of P against D?"

3. Topics of Law

A question should concern itself with an important area of the subject law covered, within the approved topic areas. The question should be broad enough to raise several issues of law. A question may involve issues in more than one topic area, such as a divorce question may raise issues of domestic relations and constitutional law. In

drafting the question, consideration should be given to the time allotted to examinees for reading the question, making an analysis, and writing the answer. If questions are developed from bar examination questions used in other jurisdictions, care should be taken to compare the length of time allotted in such other jurisdictions for answering the question.

4. Length of the Question

The time limit given to examinees to answer each question should be considered in determining the length of a question, and questions should be drafted so as to be direct, clear and succinct in posing the question to the examinee.

5. Scope of the Question

Questions should be designed primarily for the purpose of testing the analytical ability and knowledge of the general law of the topics covered by the questions and should not require knowledge of specific Idaho case or statutory law except in the area of Articles I, II, III and IX of the U.C.C., Water Law, Wills and Intestate Succession Law (U.P.C.), Domestic Relations Law, and Community Property Law. The applicants should be given written notification of which areas must be answered according to Idaho case or statutory law. Questions on civil procedure, ethics, and evidence should be framed so that they may be answered under either the Idaho or Federal Rules of Civil Procedure, the Idaho or ABA Model Rules of Professional Conduct, or the Idaho or Federal Rules of Evidence, respectively, but the examinee should be required to indicate which rules he or she is applying. It is suggested that you avoid using a single Idaho decision, or perhaps a matter of current litigation in which you were involved, as the basis for the examination question as such reliance may tend to narrow the scope and inquiry of the question.

6. Difficulty of the Question

Questions should be difficult enough to permit good students to display their superior knowledge and analytical ability. Simple *get well* questions which anticipate most students getting high score should be avoided. The examination will be compiled with the intent to provide all questions of an approximate equal complexity and length in the various areas and topics of law involved.

II. STANDARDS AND GUIDELINES FOR DRAFTING ANALYSES TO QUESTIONS:

1. Scope of the Analysis

The author of each question is requested to draft an analysis of the legal points and discussion, which are reasonably raised by the question. The analysis is not a model or correct answer, but an outline or survey of the issues and topics intended to be covered by the question and should be drafted with the intent in mind of aiding the graders to understand the scope and purpose of the question. The length of the analysis is at the author's discretion, but it is suggested that it be abbreviated to the primary points involved for easy identification by the graders.

2. Issue of the Question

The analysis should first list the issues, which the author believes are reasonably raised by the question. These issues should be framed in terms of general propositions of law rather than probable outcome of the specific factual situation presented by the question. For example, rather than listing an issue *Is P entitled to an injunction against D?* it may be more revealing to state the issue *Is a plaintiff in a divorce action entitled to an injunction against the defendant from removing the children of the parties from the state?* The issues should be so framed as to advise the graders as to what general propositions of law are thought to be involved in the questions, not merely the outcome of the dispute or litigation.

3. Analysis of the Issues

After listing each issue involved in a question, the issues should be separately identified and followed by a brief analysis based on legal principles and theories of general application along with pertinent citations. The citations need not be exhaustive, but merely serve as a possible reference to the graders in the event they desire to examine some authority to more fully understand the question analysis before commencing their grading.

4. Conclusion

The analysis should announce a conclusion or take a position upon the questions asked by the *call of the question*. However, if any alternative treatment or opinion upon an issue or the ultimate question is feasible, the analysis should recognize such alternatives and make appropriate statements as to how an examinee might properly arrive at such alternatives.

5. Weight of the Issues

The analysis need not reflect any suggested allocation of weight or importance to the various issues involved in a question; however, the primary issues should be distinguished from peripheral issues. The final determination as to the relative weight and importance of the issues is in the discretion of the graders after examining the question, the analysis, and the authority cited.